Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 79-6219

SIGNA NELSON, Appellant,

v.

STATE ACCIDENT INSURANCE FUND,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF OREGON

MOTION TO DISMISS

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Comes now Appellee and moves the Court for an order dismissing the above-entitled appeal on the ground and for the reason that the appeal raises no substantial federal question.

DISCUSSION

Throughout the hearing and appeal process, Appellant has made the following contentions:

1. That notice sent by ordinary mail, as opposed to certified mail, was not adequate notice whether or not received, when sent to Appellant's home address at a time when she was in the hospital.

2. That at the time the notice of denial was sent, Appellee knew that Appellant was incompetent, and therefore notice was insufficient.

NOTICE

ORS 656.262(6) provides:

> "If the State Accident Insurance Fund, the direct responsibility employer itself or its guaranty contract insurer or any other duly authorized agent of such employer for such purpose on record with the Director of the Workers' Compensation Department denies a claim for compensation, written notice of such denial, stating the reason for the denial, and informing the worker of hearing rights under ORS 656.283, shall be given to the claimant. A copy of the notice of denial shall be mailed to the director and to the contributing employer by the fund. The worker may request a hearing on the denial at any time within 60 days after the mailing of the notice of denial."

so that personal service is not required in order to make the notice of denial official.

Nor does the fact that the notice was sent by ordinary mail defeat the notice. The only purpose of certified mail is to provide proof of receipt by the addressee.

Appellant cites a number of cases beginning with Mullane v. Central Hanover Bank and Trust, 339 US 306, 70 S Ct 652, 94 L Ed 865 (1950), which hold that the method of service of notice must be that which is reasonably calculated to apprise the party under all circumstances. However, implicit in those decisions is that no matter what method is used, actual receipt of notice is the highest form of notice. The method used to get the knowledge to the proper party, assuming

the contents of the notice to be as required, is then no longer an issue.

In this case, the evidence is that Appellant resided, i.e., was domiciled, with her daughter. The letter was delivered to Appellant's home. Appellant's daughter opened the letter, decided not to see an attorney about it, and delivered the letter to her mother, the Appellant. No higher form of notice was possible.

APPELLANT'S INCOMPETENCY

Appellant contends that at the time the notice of denial was sent, Appellee knew that she was incompetent to handle her affairs or understand her rights, and therefore the notice was insufficient.

The evidence in this case is that during the period Appellant was undergoing shock treatment she was unable to understand anything and could not therefore handle her affairs.

The evidence also showed that Appellant entered the hospital April 25, 1973. On May 24, 1973, the notice of denial was mailed. The shock treatments began sometime in June 1973, the exact date is not shown in the record.

Appellant's daughter received the notice, opened it, read it and took it to Appellant.

In order to prevail, Appellant must show that she was in fact incompetent at the time of receipt of the notice. In that regard, two things, in addition to the above, are significant.

1. Although one must presume the information was available to Appellant, there is a complete void in the record as to when in June the shock treatments started. It must be presumed that the evidence if produced would not support Appellant.

2. Appellant's daughter testified that during the shock treatments Appellant hardly knew her own daughter and was like talking to a brick wall. She also testified that she took the notice to her mother, but did not remember whether she did this before the shock treatments started. It seems reasonable that she would not have bothered to take it during a time her mother was in the condition described, and therefore she must have taken it before the shock treatments.

This is not a case like Covey v. Town of Somers, 351 US 141 (1956), where the lady upon whom the notice was served was without friends or relatives to help her in her affairs and was commonly known to be incompetent for a period of over fifteen years.

In this case the facts show that Appellant's daughter lived with her and looked after her affairs, as is shown by the fact that the daughter felt it necessary to open the letter and decide whether to see an attorney. Also, in this case it could not have been known in May that because of treatment instituted in June that Appellant would become incompetent.

CONCLUSION

The Appellee sent the notice required by a method which actually placed it in the hands of Appellant and the person handling the affairs of Appellant. There is not a sufficient showing that the Appellant could not understand the notice or that Appellee knew of such circumstances.

Appellee acted reasonably and properly to advise Appellant of her rights. More is not required.

Appellant received actual and adequate notice.

DATED: May 5, 1980

Respectfully submitted,

STATE ACCIDENT INSURANCE FUND

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing MOTION TO DISMISS on Noreen K. Saltveit, attorney for Appellant, on the 5th day of May, 1980, by mailing to said attorney three correct copies thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to the said attorney at her regular office address to wit:

Noreen K. Saltveit
Merten & Saltveit
Suite C - Mikado Block
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and deposited in the post office at Salem, Oregon, on said day. Between the said post office and the address to which said copies were mailed, there is a regular communication by U.S. Mail.

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